

## 48A C.J.S. Judges § 187

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VI. Authority, Powers, and Duties

#### H. Particular Judges

##### 2. Other Particular Judges

## § 187. De facto judges

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  26, 35

**Generally, the official acts of de facto judges are valid as against third persons, but an attempted exercise of judicial power by an officer de jure who claims the right to act by virtue of his or her office, when in fact no such power is vested therein, is not valid.**

Generally, the official acts of a de facto judge, or a judge who functions under color of authority but whose authority is defective in some procedural form,<sup>1</sup> are valid,<sup>2</sup> at least as far as the public and third persons are concerned.<sup>3</sup> Thus, the acts of a de facto judge may not be collaterally attacked<sup>4</sup> or subject to question on jurisdictional grounds,<sup>5</sup> and a party's failure to object to a de facto judge's authority to preside constitutes waiver of the issue.<sup>6</sup>

The rule that the official acts of de facto judges are valid as against third persons cannot, however, be applied to an attempted exercise of judicial power by an officer de jure who claims the right so to act by virtue of his or her office when in fact, no such power is vested therein.<sup>7</sup> The de facto doctrine is also inapplicable where a judge is disqualified from holding office because of a basic constitutional protection designed in part for the benefit of litigants.<sup>8</sup>

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### Footnotes

<sup>1</sup> Fla.—*Card v. State*, 497 So. 2d 1169 (Fla. 1986).

Minn.—*State v. Irby*, 820 N.W.2d 30 (Minn. Ct. App. 2012), review granted, (Nov. 20, 2012).

Tex.—*Orix Capital Markets, LLC v. American Realty Trust, Inc.*, 356 S.W.3d 748 (Tex. App. Dallas 2011), review denied, (Dec. 14, 2012).

For discussion of de facto judges, generally, see § 22.

2 Colo.—*People v. Sherrod*, 204 P.3d 466 (Colo. 2009).

Fla.—*Card v. State*, 497 So. 2d 1169 (Fla. 1986).

Minn.—*State v. Irby*, 820 N.W.2d 30 (Minn. Ct. App. 2012), review granted, (Nov. 20, 2012).

Nev.—*Lueck v. Teuton*, 125 Nev. 674, 219 P.3d 895 (2009).

Tex.—*Orix Capital Markets, LLC v. American Realty Trust, Inc.*, 356 S.W.3d 748 (Tex. App. Dallas 2011), review denied, (Dec. 14, 2012).

3 Ky.—*O'Mara v. Town of Mt. Vernon*, 299 Ky. 401, 185 S.W.2d 675 (1945).

Tex.—*Orix Capital Markets, LLC v. American Realty Trust, Inc.*, 356 S.W.3d 748 (Tex. App. Dallas 2011), review denied, (Dec. 14, 2012).

4 Ind.—*Floyd v. State*, 650 N.E.2d 28 (Ind. 1994).

Tex.—*Orix Capital Markets, LLC v. American Realty Trust, Inc.*, 356 S.W.3d 748 (Tex. App. Dallas 2011), review denied, (Dec. 14, 2012).

5 N.D.—*State v. Bednar*, 18 N.D. 484, 121 N.W. 614 (1909).

6 Fla.—*Card v. State*, 497 So. 2d 1169 (Fla. 1986).

Mo.—*Buchanan v. Buchanan*, 167 S.W.3d 698 (Mo. 2005).

**Effect of objection**

A party's timely objection may defeat ratification of the actions taken in that party's case under the de facto judge doctrine.

Utah—*Pett v. Brigham City Corp.*, 2010 UT App 394, 246 P.3d 758 (Utah Ct. App. 2010).

7 Fla.—*Balfe v. Gulf Oil Company—Latin America*, 279 So. 2d 94 (Fla. 3d DCA 1973).

N.Y.—*People v. White*, 24 Wend. 520, 1840 WL 3642 (N.Y. 1840).

8 Haw.—*Application of Pioneer Mill Co.*, 53 Haw. 496, 53 Haw. 573, 497 P.2d 549 (1972).